

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAYMOND T. BALVAGE, et al.,

Plaintiffs,

v.

RYDERWOOD IMPROVEMENT AND
SERVICE ASSOCIATION, INC.,

Defendant.

CASE NO. C09-5409 BHS

ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Defendant Ryderwood Improvement and Service Association, Inc.'s ("RISA") motion for summary judgment (Dkt. 210). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

Some of the properties in Ryderwood were sold subject to certain covenants and restrictions. Dkt. 169, ¶ 35. Plaintiffs alleged that their properties were not subject to these restrictions, but that they signed Certificates of Membership in RISA when they bought their properties. *Id.*, ¶¶ 42, 44. On September 21, 2010, the Court granted RISA's motion for partial summary judgment concluding that RISA's bylaws were enforceable against Plaintiffs as covenants. Dkt. 100.

1 On May 29, 2013, RISA filed a motion for partial summary judgment requesting
2 that the Court grant it judgment on the second counterclaim for the collection of unpaid
3 dues. Dkt. 210. On June 17, 2013, Plaintiffs responded. Dkt. 224. On June 20, 2013,
4 RISA replied. Dkt. 228.

5 II. DISCUSSION

6 A. Summary Judgment Standard

7 Summary judgment is proper only if the pleadings, the discovery and disclosure
8 materials on file, and any affidavits show that there is no genuine issue as to any material
9 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
10 The moving party is entitled to judgment as a matter of law when the nonmoving party
11 fails to make a sufficient showing on an essential element of a claim in the case on which
12 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
13 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
14 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
15 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
16 present specific, significant probative evidence, not simply “some metaphysical doubt”).
17 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
18 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
19 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
20 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
21 626, 630 (9th Cir. 1987).

1 The determination of the existence of a material fact is often a close question. The
2 Court must consider the substantive evidentiary burden that the nonmoving party must
3 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
4 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
5 issues of controversy in favor of the nonmoving party only when the facts specifically
6 attested by that party contradict facts specifically attested by the moving party. The
7 nonmoving party may not merely state that it will discredit the moving party’s evidence
8 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
9 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
10 nonspecific statements in affidavits are not sufficient, and missing facts will not be
11 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

12 **B. RISA’s motion**

13 RISA claims that its “[m]otion is very simple.” Dkt. 228 at 1. RISA, however,
14 confuses the issue of whether it can enforce its bylaws with the issue of how it enforces
15 its bylaws. The issue of whether RISA can enforce its bylaws has been decided in
16 RISA’s favor. *See* Dkt. 100. In the instant motion, the issue is not whether RISA can
17 assess dues, because it can. The issue is how much it may assess. On this issue, RISA’s
18 motion fails for at least two reasons. First, RISA has failed to show that the specific
19 monthly amount of dues owed is anything more than an arbitrary amount fixed by
20 members of the board. Although RISA asserts through the improperly filed
21 “supplemental declaration” that the dues help pay for services available to all residents,
22 RISA has failed to submit an accounting of these expenses. Therefore, there is an issue

1 of fact as to the specific monthly dues owed by any member of RISA, let alone allegedly
2 “non-member” Plaintiffs.

3 Second, the bylaws require an assessment of fees for services rendered. Dkt. 210
4 at 2–3. It is undisputed that, subsequent to “withdrawing” from RISA, “Plaintiffs have
5 privately contracted for their water, sewer, and garbage services.” Dkt. 89 at 2. RISA
6 has failed to show that they are entitled to judgment as a matter of law that, pursuant to
7 the wording of the bylaws, Plaintiffs are responsible for a uniform flat fee when they did
8 not receive at least some of the services offered to paying members of the community.
9 Moreover, some of Plaintiffs’ claims of retaliation allege that RISA specifically told the
10 garbage service not to collect Plaintiffs’ garbage. Even if the garbage payment is
11 “community based,” these factual allegations create questions of fact whether RISA was
12 the catalyst for Plaintiffs ordering their own services. No interpretation of the bylaws
13 supports the proposition that Plaintiffs are financially responsible for services that RISA
14 prevented Plaintiffs from enjoying. Therefore, RISA’s motion must be denied because
15 questions of fact exist as to Plaintiffs’ actual share of the required dues.

16 III. ORDER

17 Therefore, it is hereby

18 **ORDERED** that RISA’s motion for summary judgment (Dkt. 210) is **DENIED**.

19 Dated this 9th day of July, 2013.

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22 BENJAMIN H. SETTLE
United States District Judge